Health and Hospitals Network Bill 2011

Explanatory Notes

Short Title

Health and Hospitals Network Bill 2011

Policy Objectives

The primary purpose of the *Health and Hospitals Network Bill 2011* is to establish Local Health and Hospital Networks to deliver public sector hospital and other health services in Queensland.

The Bill implements the Queensland Government's legislative commitments that stem from the Council of Australian Government's (COAG) Inter-Governmental Agreement, as agreed on 20 April 2010, and the COAG Heads of Agreement on National Health Reform, as agreed on 13 February 2011. First Ministers are currently leading a process to develop a new national health reform agreement that will combine the 2008 National Healthcare Agreement with the subsequent health reform elements agreed by COAG.

Under the agreements, Local Hospital Networks (called 'Local Health and Hospital Networks' in Queensland) are to be established as separate legal entities under State legislation in order to devolve operational management for public hospitals to the local level. Networks will be the direct managers of a single or small group of public hospitals, and will be held directly accountable for hospital performance under a Performance and Accountability Framework.

Under the agreements, States will be the 'system managers' for the public health system and will be responsible for:

- entering into service agreements with networks to provide public sector health services
- system-wide health service planning and policy
- system-wide public hospital capital planning and management, and project management of hospital capital projects

- State-wide public hospital industrial relations, including the negotiation of enterprise bargaining agreements, and the establishment of remuneration and employment conditions for employees working in networks, and
- monitoring public hospital performance, including taking action to address poor performance.

Under the agreements, States also have the discretion to provide health services other than hospital services through the networks.

The implementation of the national health reforms, including the enactment of this Bill, will have major benefits for Queensland including:

- improved responsiveness of services through greater flexibility and local decision-making
- improved integration of services across the health service continuum through new mechanisms for engagement between hospitals and primary care providers
- more opportunities for local clinicians, health consumers and communities to be involved in service planning, design and priority setting for local services
- improved accountability with clear lines of responsibility and new regular reporting on clinical and financial performance at the network and facility level
- improved efficiency through the application of new funding models and the injection of expertise from new Governing Councils who will be responsible for managing the networks, and
- improved transparency – community members will have access to information about Commonwealth and State contributions to networks, what was provided and how their network's or hospital's performance compares with like networks or facilities.

Together these changes, plus the introduction of new funding models that directly link funding to outputs, are expected to deliver better value for money in the short to medium term. In the long term, the changes will better position the health system to meet the challenges associated with an ageing population and a growing incidence of chronic disease.

Retail display bans for smoking products

In addition, the Bill strengthens current measures that address the impact of retail displays of smoking products, which are known to normalise tobacco to children and predispose them towards smoking, and gives effect to a 2010 recommendation of the Social Development Committee to ban smoking product displays in retail settings.

The Bill provides for the complete ban on the display of smoking products in retail settings; removing the current provisions that allow retailers and tobacconists to display products in up to a one square metre and three square metre area (respectively). Complete retail display bans in Queensland will help to further reduce youth exposure to tobacco, influence youth uptake and create supportive environments for those smokers who have recently quit and those who want to quit.

Restrictions on tobacco advertising and display are an essential component of a broader, comprehensive tobacco control strategy. Queensland was the first jurisdiction in Australia to take action regarding retail display restrictions in 2005. Restricting retail advertising and promotion is a highly effective tobacco control strategy supported by the World Health Organisation and reflected in the key priorities set out in the Framework Convention on Tobacco Control, ratified by Australia in 2004.

The action being taken by Queensland to introduce display bans is consistent with all other Australian jurisdictions that have made commitments regarding bans on retail displays and are at various stages of implementation.

Achievement of Policy Objectives

The object of the Bill is to deliver high quality hospital and other health services having regard to the principles and objectives of the national health system as specified in the Bill.

The Bill aims to achieve this by:

- σtrengthening local decision-making and accountability, and local consumer and community engagement
- providing for State-wide health system management, including health system planning, coordination and standard setting, and
- balancing the benefits of these local and system-wide approaches.

This will mainly be achieved through the establishment of networks as statutory bodies to be the principal providers of public sector health services in Queensland. Networks will be established by regulation made under the Act, which will also specify the part of the State, the public sector hospitals, public sector health service facilities or public sector health services for which the network is responsible.

Networks will be required to enter into a service agreement with the departmental chief executive for the provision of hospital and other health services. Service agreements will also specify the funding to be provided for the services and the relevant performance measures.

Each network will be independently and locally controlled by an expertise-based Governing Council, including persons with expertise in health management, business management, financial management, human resource management and the law, persons with clinical expertise, persons with experience and knowledge of primary healthcare, persons with knowledge of health consumer and community issues and, where relevant, persons from universities, clinical schools or research centres with expertise relevant to the operations of the network.

The Minister is to publicly advertise to fill the positions of Governing Council members.

Networks are to be statutory bodies under the *Financial Accountability Act 2009* and the *Statutory Bodies Financial Arrangements Act 1982*, and a unit of public administration under the *Crime and Misconduct Act 2001*.

Networks will have the power to employ network chief executives and other health executives, but not other staff. The departmental chief executive will be the employer of all other health service employees. However, it is intended that there will be a significant delegation of employment powers from the departmental chief executive to network chief executives where a network can demonstrate they have the appropriate capacity and capability to administer human resource matters.

Land and buildings, and other prescribed assets, will not be transferred to networks and will continue to be owned by the State.

Other functions of networks, as specified in the Bill, are:

- to carry out their operations efficiently, effectively and economically
- to implement State-wide plans and undertake further planning in the network area

- to monitor and improve the quality of health services delivered by the network
- to develop local clinical governance arrangements
- to undertake minor capital works and maintain assets
- to co-operate with other service providers and local primary healthcare organisations (called 'Medicare locals')
- to manage network performance and provide performance data to the departmental chief executive
- to consult with network health professionals, and
- to consult with health consumers and community members.

To strengthen engagement with clinicians, health consumers and the community, the Bill requires each network to develop and publish a clinician engagement strategy and a consumer and community engagement strategy. The strategies must meet the minimum requirements prescribed under a regulation.

Networks are also required to develop a protocol with 'Medicare locals' to facilitate co-operation in the planning and delivery of health services.

Networks are to each appoint a network chief executive to manage the operations of the network.

Under the national health reforms and this Bill, the departmental chief executive is to play the role of 'system manager' for the public sector health system in Queensland.

As the system manager, the departmental chief executive is responsible for:

- State-wide health service, workforce and capital works planning
- managing major capital works
- State-wide industrial relations, including the negotiation of certified agreements
- issuing health service directives to networks
- providing specified support services to networks
- monitoring and promoting improvements in the quality of health services provided by networks

- monitoring the performance of networks and taking remedial action where required, and
- providing performance data to the Commonwealth.

Health service directives may be issued for the following purposes:

- to promote service coordination and integration in the delivery of health services
- to optimise the effective and efficient use of available resources in the delivery of health services
- to set standards and policies for the safe and high quality delivery of health services
- to ensure consistent approaches to the delivery of health services, employment matters and the delivery of support services (as defined in the Bill), and
- to support the application of public sector policies Acts and agreements.

Networks are to be individually accountable for their performance. Under the Bill, networks are required to report on their performance to the departmental chief executive. The chief executive is, in turn, responsible for collating and validating the data provided by networks, and providing the data to the Commonwealth and relevant Commonwealth entities, such as the proposed National Health Performance Authority.

Health service employees, other than network chief executives and other network health executives, are to be employed by the departmental chief executive. In arrangements similar to those under the *Health Services Act 1991*, the terms and conditions of health service employees (other than health executives) will be established by:

- the provisions of the *Health and Hospitals Network Act 2011*
- the provisions of the *Public Service Act 2008*, and directives issued under that Act, that are applied to health service employees by regulation under the Public Service Act
- industrial instruments
- health service directives, and
- for contracted employees, the employee's contract.

The Bill also retains the health executive service across networks and in the department.

The Bill repeals the *Health Services Act 1991*. Some of the provisions of the Health Services Act, modified as necessary for the new organisational arrangements, are re-enacted in the Bill. These provisions relate to the establishment of quality assurance committees, the undertaking of root cause analysis, confidentiality, and the control of traffic and conduct on health services land.

Assets (other than land and buildings), liabilities, contracts and agreements are to be transferred from the department to the networks by way of a Transfer Notice issued by the Minister by gazette notice.

The Bill makes consequential amendments to various Acts, predominantly to change references from the *Health Services Act 1991* to the *Health and Hospitals Network Act 2011*, and to reflect the transfer of functions from the department to networks.

Retail display bans for smoking products

The Bill removes current provisions permitting the limited display of smoking products in retail settings and prohibits any display of smoking products. In addition, consequential amendments are made in relation to the location of smoking products, the point of sale for smoking products, signage, appearance and price tickets.

Estimated Cost for Government Implementation

The Queensland Government is responsible for meeting the costs of implementing the new structural and governance arrangements to support its commitment to the COAG reforms.

Implementation costs fall into two key areas - one-off transition costs and ongoing recurrent costs associated with the new structure.

One-off transition costs include costs associated with staffing changes, changes to information and communication technology systems and start-up costs associated with recruiting and inducting Governing Council members.

Recurrent costs will include ongoing remuneration costs for Governing Councils and a range of miscellaneous costs associated with the devolved model, such as additional audit costs.

Balancing these costs, the introduction of these changes will support an improved culture of accountability and budget discipline. The introduction of a national efficient price for services and functions under both activity-based and block funding methodologies, plus public and comparative reporting of financial (and other) performance at an individual hospital and network level, will reinforce local accountability and support early identification and remediation of poor performance.

Service agreements between each network and the department will create an explicit relationship between funds allocated and services provided, strengthen managers' and Governing Council members' focus on outputs, outcomes and quality, facilitate benchmarking across like services, and provide a platform for greater public accountability.

Government costs associated with the implementation of the display bans for smoking products will be met within existing budgets.

Consistency with Fundamental Legislative Principles

- **'Shield' of information**

The quality assurance committee, root cause analysis (RCA) and clinical reviews divisions of Part 6 include provisions that prevent reports and information from being compellable in legal proceedings. Provisions in this part also protect information provided by persons to RCA teams and quality assurance committees. These provisions raise the issue of whether the Bill has adequate regard to the principles of natural justice, as they may deny individuals the use of information relevant to legal proceedings.

The protection afforded by these provisions, and the associated strict confidentiality provisions in the Bill, are critical to the effective functioning of quality assurance committees, RCA teams and clinical reviews, in particular, by promoting clinician participation in these activities. The protections in relation to quality assurance committees and RCA teams largely reflect those in the *Health Services Act 1991*.

- **Protection from liability**

Under the Bill, various persons are protected from civil liability for actions taken under the Act. This applies to persons such as members of Governing Councils, health service auditors, clinical reviewers, investigators, and members of quality assurance committees and root cause analysis teams. Similar protections are also afforded to persons who provide information to a quality assurance committee, a root cause analysis team or a clinical

review. These protections raise the issue of whether the Bill has sufficient regard for the rights of individuals by conferring immunity from legal proceedings.

It is not considered appropriate that an individual may be made personally liable for carrying out his or her responsibilities under the legislation in good faith. The Bill provides that, instead of liability being attached to the individual, the liability attaches to other entities including the State or a network. (This does not apply to persons who provide information to a quality assurance committee, root cause analysis team or a clinical review). It should also be noted that the protection from liability only extends to acts done honestly and without negligence.

- **Powers of Entry**

Health service auditors, clinical reviewers, health service investigators and inspectors may enter a public sector health service facility at any time the facility is open for business or otherwise open for entry. The inclusion of this power raises the issue of whether the Bill has sufficient regard for the rights of individuals by allowing entry to premises without a warrant.

It is considered that this power is reasonable given the restricted range of premises that the power applies to, namely the statutory bodies (networks) established under the Act. The exercise of powers by health service auditors, clinical reviewers, investigators and inspectors are an important component of achieving the objectives of the legislation related to the delivery of high quality health services. It should also be noted that the exercise of powers by health service auditors, investigators and clinical reviewers is not for the purpose of establishing any offence under the Act.

- **Transitional regulation-making power**

The Bill enables a transitional regulation to be made about a matter to facilitate the establishment of networks. The inclusion of this power raises the issue of whether the Bill has sufficient regard to the institution of the Parliament.

Although the Bill provides for a range of transitional issues, it is possible that unanticipated matters may arise given the complexity of transitioning to the new organisational arrangements. It should be noted that this provision expires on 30 June 2013, 12 months after the intended commencement of networks.

- **Transfer Notice**

The Bill deals with the issuing of a transfer notice by the Minister to facilitate the transfer of functions from the department to networks. These provisions raise fundamental legislative principle issues in that the power is exercised by gazette notice rather than through regulation, that decisions in relation to a transfer notice are not reviewable, and that actions taken under a transfer notice cannot make the State, or an employee or agent of the State, liable for any civil action.

The transfer to the new organisational arrangements will be very complex. This will be particularly so in relation to effectively transitioning thousands of contracts and agreements to the new arrangements. The transfer notice provisions of the Bill have been included to enable the effective and efficient transition to these arrangements, to minimise the administrative complexity associated with the transition, and to protect the rights and obligations of all parties to existing contracts and agreements.

The Bill provides that the exercise of the power to issue a transfer notice can only be for the purpose of facilitating the transfer of functions from the department to the networks. It is intended that this power will be exercised to maintain the status quo, in practice, in terms of the rights and obligations that the State and other parties have under existing contracts. This will include, for example, enabling networks to make purchases under contracts that currently apply to the department, and to novate contracts so that the party becomes a particular network rather than the department where a function has been transferred from the department to the network.

It would not be feasible to renegotiate all of these contracts. In addition, in the absence of the statutory provisions, it is possible that an entity may seek to take commercial advantage of the restructuring arrangements to renegotiate contract terms which are more favourable to them and to the disadvantage of the State.

These provisions are based on similar provisions used in other recent Acts, including in the *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009*.

It should be noted that these provisions expire on 30 June 2013, 12 months after the intended commencement of networks.

Consultation

Consultation has occurred over a period of nearly twelve months with Queensland Health staff and key external stakeholders to ensure that the maximum benefit is derived from implementation of the reforms in Queensland.

In October-November 2010, consultation sessions were held in all Health Service Districts to enable staff and external stakeholders (including local, State and federal government representatives) to express a view on the boundaries for their local network. These boundary decisions were subsequently agreed with the Commonwealth in December 2010.

Targeted consultation supported by a range of discussion papers also occurred at this time on network Governing Councils, consumer and community engagement, clinician engagement, and service integration.

In March 2011, specific consultation on the draft Bill was undertaken with executive level officers within Queensland Health and the Departments of the Premier and Cabinet, Treasury and Justice and Attorney General.

In June 2011, targeted consultation occurred with unions, Health Consumers Queensland, Chairs of Health Community Councils, General Practice Queensland and General Practice Divisions.

In relation to the smoking product display bans, members of the public were given the opportunity to provide a submission to the Social Development Committee's Inquiry into Chronic Disease in Queensland. Since the Government's announcement on 29 April 2010 of its intention to introduce retail display bans, departmental meetings have been held with key industry stakeholders including Philip Morris, British American Tobacco Australia, Imperial Tobacco, Coles, Woolworths and FreeChoice Tobacconists.

Notes on Provisions

Part 1 Preliminary

Division 1 Introduction

Clause 1 states the short title for the Act.

Clause 2 states that the Act commences on a day to be fixed by proclamation.

Clause 3 States that the Act binds all persons including the State, the Commonwealth and the other States.

Clause 4 outlines the principles and objectives of the national health system as agreed by the Council of Australian Governments (COAG).

Division 2 Object of Act

Clause 5 states that the object of the Act is to establish a public sector health system that delivers high quality hospital and other health services to persons in Queensland having regard to the principles and objectives of the national health system (as outlined in the previous clause). This clause also provides that this object is mainly achieved by balancing the benefits of strengthened local decision-making and accountability, and local consumer and community engagement, with the benefits of State-wide health system management including health system planning, coordination and standard setting.

Division 3 Overview of Act

Clauses 6 to 12 provide an overview of the Act. These clauses aim to help a reader of the Act to understand the model of health reform that is to be

implemented in Queensland. The key elements of the Act as provided for in these clauses are:

- establishment of Local Health and Hospital networks
- management of the public sector health system
- management of health system performance
- State-wide employment and industrial relations arrangements
- protections for safety and quality, and
- confidentiality safeguards.

Division 4 Guiding principles of Act

Clause 13 provides for the guiding principles for the Act. These principles have been replicated from the *Health Services Act 1991*, which were inserted into that Act in 2006. Importantly, the clause provides that a person performing a function or exercising a power under the Act must have regard to these guiding principles.

Division 5 Interpretation

Clause 14 provides that the dictionary for the Bill is located at Schedule 3.

Clause 15 provides for the definition of 'health service', which is used throughout the Bill, as being a service for maintaining, improving, restoring or managing people's health and well-being. A health service also includes a support service for a health service. A support service is defined in the dictionary as including corporate support services (which is also defined in the dictionary), a business support service and a clinical support service.

Clause 16 provides a definition of 'service agreement' for the purpose of the Bill. In essence, a service agreement is to specify the services to be provided by a network, the funding to be provided for the services, and the performance measures for the provision of the services (including the performance data and other data to be provided). This clause also clarifies that a service agreement may deal with matters relating to funding provided

by the Commonwealth without the Commonwealth being a party to the agreement. Under the COAG agreements, the Commonwealth will be providing funding for the operation of Queensland's hospitals, but will not have a direct service level agreement with networks. As such, the matters specified in this clause will relate to the funding provided by the State and the Commonwealth.

Part 2 Local Health and Hospital Networks

Division 1 Establishment, functions and powers of networks

Clause 17 provides for the establishment of Local Health and Hospital Networks (called 'networks' under the Bill). Networks are to be established by regulation under the Act by reference to a part of the State, a public sector hospital, a public sector health service facility, or a public sector health service. The regulation is also to assign a name to the network.

Clause 18 provides for the legal status of networks. A network is to be a body corporate representing the State with the privileges and immunities of the State.

Clause 19 states the functions of networks. The main function is to deliver the hospital services, other health services, teaching, research and other services stated in the service agreement for the network. (The *Achievement of Policy Objectives* section of these Explanatory Notes specifies other key network functions).

Clause 20 provides for the power of networks. Generally, networks have the power of an individual and may, for example, enter into contracts and agreements, and acquire and dispose of property. This clause also states that a network may not own land or buildings, or other assets prescribed by regulation. Under the health reform model in Queensland, land and buildings will continue to be owned by the State. This clause also provides that a network may employ network chief executives and other health executives, but not other staff.

Clause 21 provides that a network is a statutory body under the *Financial Accountability Act 2009* and the *Statutory Bodies Financial Arrangements Act 1982*, and a unit of public administration under the *Crime and Misconduct Act 2001*.

Division 2 Governing councils for networks

Subdivision 1 Role of Governing Councils

Clause 22 provides that a Governing Council controls the network for which it is established.

Subdivision 2 Membership

Clause 23 provides for the membership of Governing Councils, which are to consist of 5 or more members appointed by the Governor in Council on the recommendation of the Minister. The relevant skills, knowledge and experience to be a Governing Council member are summarised in the *Achievement of Policy Objectives* section of these Explanatory Notes.

Clause 24 provides that the Minister must advertise for suitably qualified persons to be members of Governing Councils.

Clause 25 provides that the Governor in Council, on the recommendation of the Minister, is to appoint a chairperson and deputy chairperson for each Governing Council.

Clause 26 provides that members are to be appointed for a term of not more than four years and are to be paid the fees and allowances fixed by the Governor in Council.

Clause 27 states how the office of a member of a Governing Council becomes vacant.

Clause 28 provides for the way in which members of Governing Councils may be removed from office.

Clause 29 states that a decision of a Governing Council is not invalidated by a defect or irregularity in the appointment of a member or by a vacancy in the membership of a Governing Council.

Subdivision 3 Delegation by Governing Councils

Clause 30 provides that a Governing Council may delegate the network's functions and powers under this Act. (It should be noted that, as the Governing Council controls the network for which it established, the Governing Council has the powers specified in the Bill for its network). A Governing Council may also delegate the network's powers under the *Financial Accountability Act 2009*. (It should also be noted that powers of delegation for statutory bodies are not included in the Financial Accountability Act itself.) The above-mentioned powers may be delegated to a committee of the Governing Council, if all of the members of the committee are Governing Council members, or to the network chief executive. With the approval of the Governing Council, the network chief executive may sub-delegate these powers.

Subdivision 4 Conduct of business

Clause 31 provides that a member of a Governing Council is to act impartially and in the public interest in performing the member's duties.

Clause 32 provides that a Governing Council is to conduct its business in the way stated in Schedule 2.

Division 3 Network chief executives

Clause 33 provides that a network's Governing Council is to appoint a network chief executive to manage the network. A network chief executive is to be subject to the network's Governing Council, but not in relation to employment matters, as these are delegated from the departmental chief executive.

Clause 34 provides that a network chief executive may delegate the chief executive's functions and powers under this Act to an appropriately qualified network health executive or network employee (as defined). However, the network chief executive cannot delegate the authorisation to disclose confidential information in the public interest (see clause 160).

Division 4 Service agreements, engagement strategies and protocols

Clause 35 provides that the departmental chief executive and each network must enter into a service agreement for the network. (The term 'service agreement' is defined in clause 16 of the Bill).

Clause 36 provides that a service agreement must be for a term of no longer than 3 years.

Clause 37 provides that negotiations for subsequent service agreements are to commence at least six months before the expiry of the existing service agreement, to allow adequate time for the terms of the agreement to be negotiated. For the initial service agreement, negotiations must commence when this clause commences.

Clause 38 addresses circumstances where the departmental chief executive and a network cannot agree on the terms of a service agreement. In these circumstances, the Minister is to decide on the terms of the service agreement.

Clause 39 outlines the procedures that the parties are to follow when amending a service agreement.

Clause 40 provides that a network must develop and publish two strategies, namely, a clinician engagement strategy, and a consumer and community engagement strategy. These strategies must be developed in consultation with health professionals, and health consumers and members of the community, respectively. The strategies must also meet the requirements prescribed under a regulation.

Clause 41 requires the strategies to be reviewed at least once every three years.

Clause 42 outlines the requirements in relation to developing a protocol with primary healthcare organisations (also called ‘Medicare Locals’).

Each network must make its best endeavours to agree on a protocol with local primary healthcare organisations to promote co-operation between the network and the organisations in the planning and delivery of health services. A protocol must also meet the requirements prescribed under a regulation.

Clause 43 requires a protocol to be reviewed at least once every three years.

Division 5 Directions by Minister

Clause 44 gives the Minister the power to issue a direction to a network if it is in the public interest to do so. The network must include a statement about any such direction in its annual report.

Part 3 Functions of chief executive and chief health officer

Division 1 Chief executive

Clause 45 outlines the functions of the departmental chief executive under the Bill. The performance of these functions are a critical part of the health reform model adopted in Queensland, with the departmental chief executive having responsibility as the 'system manager' for the public health system in Queensland. The key functions are summarised in the *Achievement of Policy Objectives* section of these Explanatory Notes.

Clause 46 provides that the departmental chief executive may delegate the chief executive's functions and powers under this Act to an appropriately qualified departmental employee, or a network chief executive. With the approval of the departmental chief executive, these powers may be sub-delegated. However, the chief executive cannot delegate the authorisation to enter into a service agreement, disclose confidential information in the public interest (see clause 160) or to issue a health service directive.

Division 2 Chief executive may issue health service directives

Clause 47 gives the departmental chief executive the power to develop and issue health service directives to networks. The performance of this function is a key part of the departmental chief executive's role as the 'system manager' for the public sector health system in Queensland. The purposes for which health service directives may be issued are summarised in the *Achievement of Policy Objectives* section of these Explanatory Notes.

The Bill specifies examples of the matters for which health service directives may be issued as including:

- standards for the healthcare rights of users
- standards for improving the quality of health services
- the terms and conditions of employment for health service employees
- the use of support services and specified contracts by networks
- the provision of information to the departmental chief executive
- responding to public health emergencies, and
- the setting of fees and charges.

Sub-clauses 47(4) and (5) provide that if a health service directive about the terms and conditions of employment for health service employees is inconsistent with an industrial instrument, the industrial instrument prevails to the extent of the inconsistency. However this does not apply if the terms of the directive are more favourable than those in an industrial instrument.

Clause 48 requires the departmental chief executive to consult with networks in developing health service directives.

Clause 49 requires health service directives to be published.

Clause 50 provides that health service directives are binding on networks.

Clause 51 requires health service directives to be reviewed at least once every three years in consultation with the networks.

Division 3 Chief health officer

Clause 52 requires there to be a chief health officer for the State who is to be a medical practitioner (which is defined in the *Acts Interpretation Act 1954* to be a person registered as a medical practitioner under the Health Practitioner Regulation National Law).

Clause 53 states the functions of the chief health officer, namely, to provide high level medical advice to the departmental chief executive and the Minister on health issues and to perform other functions given to the chief health officer by the departmental chief executive, or under an Act.

Part 4 Performance reporting and auditing

Division 1 Performance reporting

Clause 54 applies to performance data (as defined in the dictionary) and other data provided by a network to the departmental chief executive under a service agreement or a health service directive. This clause provides that this data may be validated by the departmental chief executive and provided to the Commonwealth or an entity established by the Commonwealth Parliament. Under the COAG Agreements, the relevant Commonwealth entities are anticipated to be the Australian Commission on Safety and Quality in Healthcare, the National Health Performance Authority, an Independent Hospital Pricing Authority and a National Funding Authority.

Division 2 Health service audits

Clause 55 states the functions of health service auditors appointed under the Act, namely –

- to examine the accuracy of performance data and other data

- to investigate the circumstances leading to the inability of a network or a specialised health service (provided by the department) to meet relevant performance measures, and
- to investigate any other matter for the effective and efficient use of available resources.

Clause 56 provides that a health service auditor may be appointed by the departmental chief executive to undertake an audit in the department or a network, or by a network chief executive to undertake an audit in the network.

Clause 57 provides that a health service auditor is to hold office on specified conditions.

Clause 58 states when the office of a health service auditor ends.

Clause 59 provides that a health service auditor may resign.

Clause 60 provides for the powers of health service auditors. Under this provision, a health service auditor may enter a public sector health facility at any time the facility is open for business or otherwise open for entry. (See *Consistency with Fundamental Legislative Principles* in these Explanatory Notes). A health service auditor may also require an employee of the department or a network health executive to give the auditor a document, including a document that contains confidential information.

Clause 61 provides that a person must not state anything to a health service auditor, or give a document to a health service auditor, that is false or misleading

Clause 62 states that a person must not obstruct a health service auditor.

Clause 63 states the duty of confidentiality that applies to health service auditors. Limited exceptions to this duty of confidentiality are also stated in this clause.

Clause 64 requires a health service auditor to prepare and provide a report to the person that appointed them to undertake the audit (i.e. the departmental chief executive or a network chief executive). The report may include recommendations about the ways in which the accuracy of performance data and other data can be improved, the ways in which the performance of a network or a specialised health service may be improved or whether there should be any changes to the way in which public sector health services are provided.

Where the departmental chief executive has appointed an auditor to undertake an audit in a network, the departmental chief executive may subsequently issue directions to the network as result of the health service audit.

Clause 65 requires a network chief executive to give the departmental chief executive a copy of a health service audit report if requested to do so by the chief executive.

Part 5 Health service employees

Division 1 General

Clause 66 provides an overview of how the conditions of employment for health service employees are established. For employees other than health executives, the employment conditions are governed by this Act, the applied Public Service law, a relevant industrial instrument (as defined in the dictionary), health service directives and, if the employee is appointed under a contract, the employee's contract. The reference to the 'applied Public Service law' refers to the provisions of the *Public Service Act 2008,* or a directive issued under that Act, that are applied to health service employees by the making of a regulation under the Public Service Act. This continues the model that applies under the *Health Services Act 1991*. Under current arrangements, for example, the appeal provisions under the Public Service Act are applied to health service employees by way of a regulation made under the Public Service Act.

This clause also states that a health executive's conditions of employment are governed by this Act, the applied Public Service law, health service directives and the executive's contract.

This clause also provides that the departmental chief executive may determine that the conditions of employment of a particular health service employee may be more favourable than those contained in an industrial instrument.

Clause 67 provides that a health service employee may be appointed by the departmental chief executive in the department, including to work in a network. In addition, a network may appoint health executives in the

network. The definition of 'appoint' in the dictionary states that appoint means:

- for a person who is a health service employee – promote, transfer, second or redeploy the employee, or
- for other persons – employ the person as a health service employee.

This clause also states that employees may be employed on tenure, on contract (including as a health executive), on a temporary basis or on a casual basis. Appointments may be full-time or part-time.

Clause 68 provides that persons appointed on a contract (other than a health executive) must enter into a written contract of employment. (Clause 74 deals with contracts for health executives).

Clause 69 states that health service employees are not public service employees.

Division 2 Health executive service

Clause 70 states that the health executive service established under the *Health Services Act 1991* is continued under this Act.

Clause 71 states that the purpose of the health executive service is to promote effectiveness and efficiency in the delivery of public sector health services by attracting, developing and retaining a core of mobile, highly skilled health executives.

Clause 72 states the principles of health executive service employment, namely, to develop a State-wide perspective about the delivery of public sector health services, to continue the development of health executives, and to develop health executives' skills through their deployment in networks and the department.

Clause 73 provides that the health executive service is comprised of the network chief executives and other persons appointed under the Act as health executives.

Clause 74 states who a health executive must enter into a written contract of employment with. This clause also provides for a health executive's resignation and the termination of a health executive's appointment.

Clause 75 provides that certain matters ('excluded matters') are not industrial matters for the purposes of the *Industrial Relations Act 1999*. An excluded matter cannot be challenged appealed, reviewed or called in question under the *Judicial Review Act 1991*. For the purpose of this clause, an excluded matter means a decision to appoint or not to appoint a person as a health executive, the contract of employment for a health executive, the application of the Act to a health executive, or the termination of a health executive's contract of employment.

Clause 76 provides that the departmental chief executive may fix the remuneration packages for health executives, the classification levels at which they are to be appointed and the terms and conditions of their contracts.

Division 3 Other provisions relating to health service employees

Clause 77 provides that a health service employee may be redeployed or seconded to a lower classification level only with the consent of the person. However, this does not apply if this is as a result of disciplinary action against the employee.

Clause 78 provides that the relevant person may seek to establish reasonable grounds for refusing a transfer. (It should be noted that the power to appoint a person includes the power to transfer - see definition of 'appoint' in dictionary.) If the person fails to establish reasonable grounds for refusing the transfer, the relevant chief executive may end the employee's employment. If the employee establishes reasonable grounds for refusing the transfer, the transfer is cancelled and the refusal must not be used to prejudice the employee's prospects for future promotion or advancement. This clause also provides that the transfer applies despite anything in an employment contract.

Clause 79 provides that health service employees have reversionary rights in certain circumstances. Where a health service employee on tenure is appointed to a contract, other than as a health executive, at the end of the contract the employee is entitled to return to their tenured position at the same classification level and remuneration that they would have received if they had continued in their tenured position for the period they were under contract.

Clause 80 requires the departmental chief executive to comply with a relevant health service directive if the chief executive believes that health service employees are surplus to the needs of the department or a network.

Part 6 Safety and quality

Division 1 Quality assurance committees

The provisions of this division replace the quality assurance provisions of the *Health Services Act 1991* (Part 4, Division 2). The provisions have been modified to reflect the establishment of networks and to incorporate some of the protections that apply to root cause analysis teams.

Clause 81 states the purpose of this division, namely, to improve the safety and quality of health services by providing protections for quality assurance committees established under the division.

Clause 82 provides that a quality assurance committee may be established by a network, the departmental chief executive, a professional association, society, college or other entity, or a private health facility. The departmental chief executive may establish a quality assurance committee for a matter relating to a network or the department. These entities may also jointly establish a committee.

Clause 82(3) outlines the basis on which an entity may establish a quality assurance committee.

This clause also requires that an entity that establishes a quality assurance committee must notify the departmental chief executive of its establishment in the approved form. The departmental chief executive must establish a register of committees, which is to be made publicly available.

Clause 83 provides that a committee must have regard to the rules of natural justice in performing their functions. In addition, a report or information produced by the committee must not disclose an individual unless that individual has consented in writing to the disclosure.

Clause 84 places a duty of confidentiality on a committee member or a relevant person for a committee. ('Relevant person' is defined in the dictionary as a person authorised by the committee to help the committee

to perform its functions). This clause also specifies exceptions to the duty of confidentiality.

Clause 85 enables a committee to give a copy of a report or other document to a prescribed patient safety entity, which is an entity prescribed under regulation whose responsibilities include the planning, implementation, management and evaluation of patient safety initiatives and programs. The clause also places a duty of confidentiality on a patient safety entity that receives a report or document.

Clause 86 links to the mandatory notification provisions under the Health Practitioner Regulation National Law. The effect of this clause is that the mandatory notification provisions of the National Law do not apply to 'excluded notifiable conduct' which comes to the notice of a registered health practitioner who is a member of a quality assurance committee. 'Excluded notifiable conduct' is defined in the dictionary.

Clause 87 provides statutory protection to documents and information in relation to a quality assurance committee. Such a document or information cannot be accessed under any judicial or administrative order and is not admissible in any proceeding, other than a proceeding for an offence under this division. In addition, a person cannot be compelled to produce the document or information or give evidence relating to the document or information. (See *Consistency with Fundamental Legislative Principles* in these Explanatory Notes).

Clause 88 provides statutory protections for a member of a committee or a relevant person for the committee. The clause provides that in any proceedings, the person must be indemnified by the entity that established the committee. (See *Consistency with Fundamental Legislative Principles* in these Explanatory Notes).

Clause 89 provides statutory protections for persons who honestly and on reasonable grounds give information to a committee or a relevant person for a committee. In these circumstances, the person is not subject to any liability for giving the information and no action may be taken against the person for giving the information. (See *Consistency with Fundamental Legislative Principles* in these Explanatory Notes).

Clause 90 provides that a person cannot be required under an Act or legal process to divulge whether or not the person gave information to a committee, or divulge any document or information given to the committee.

Clause 91 establishes a head of power to make a regulation for committee procedures, and for permitting or requiring information to be made available to the public, the Minister, the departmental chief executive or another entity.

Clause 92 provides that the provisions of this division prevail over any other Act or law if there is an inconsistency between them.

Division 2 Root cause analysis

The provisions of this division replace the root cause analysis provisions of the *Health Services Act 1991* (Part 4B), modified to reflect the establishment of networks.

Subdivision 1 Preliminary

Clause 93 states the purpose of this division, namely, to facilitate the use of root cause analysis ('RCA') as a quality improvement technique to assess and respond to reportable events that happen while health services are being provided.

Clause 94 specifies the definitions for this division. A 'reportable event' is an event prescribed under a regulation that happens while a health service is being provided.

Clause 95 explains the meaning of root cause analysis as being a systematic process of analysis under which factors that contributed to the happening of the event may be identified, and remedial measures that could be implemented to prevent a recurrence of a similar event may be identified. Root cause analysis does not include investigating the professional competence of a person or finding out who is to blame for the happening of the event.

Clause 96 clarifies when health services are being provided for the purpose of the division, including where a service is provided to a person by a health professional at a place other than a health service facility or where a person is undertaking care or treatment while residing in the community.

Clause 97 states the guiding principles for the conduct of a root cause analysis of reportable events.

Subdivision 2 RCA teams

Clause 98 provides that an RCA team may be appointed by a network chief executive, the departmental chief executive or the management of a private health facility. These entities are referred to as a 'commissioning authority' for the purpose of this division.

Clause 99 specifies the requirements that must be met in appointing an RCA team, including that a team member must not have been directly involved in providing the health service during the provision of which the reportable event happened.

Subdivision 3 Reporting

Clause 100 requires that an RCA team must prepare a report after conducting a root cause analysis of a reportable event. In addition, the RCA team may prepare a chain of events document that represents the chain of events identified by the RCA team as having led to the happening of a reportable event.

Clause 101 requires the RCA team to provide a copy of the report to the commissioning authority and, if a chain of events document has been prepared, a copy of that document.

Subdivision 4 Stopping conduct of RCA of reportable event

Clause 102 applies if, in conducting a root cause analysis, the RCA team believes that the reportable event involves a blameworthy act (as defined) or that a person directly involved in the event was impaired by alcohol or drugs. In these circumstances, the RCA team must stop the root cause analysis and give written notice to the commissioning authority that the root cause analysis has been stopped.

Clause 103 applies if the commissioning authority believes that the reportable event involves a blameworthy act (as defined), that a person directly involved in the event was impaired by alcohol or drugs, or where

the commissioning authority comes to the view that the event was not in fact a reportable event. In these circumstances, the commissioning authority must direct the RCA team to stop the root cause analysis. In addition, a commissioning authority may stop a root cause analysis if the commissioning authority becomes aware that a relevant entity (as defined in this clause) has started an investigation into the event.

Subdivision 5 Disclosure or release of information

Clause 104 provides a definition for this subdivision.

Clause 105 places a duty of confidentiality on RCA team members or a relevant person for an RCA team. ('Relevant person' is defined in the dictionary as a person authorised by the RCA team to help the team perform its functions). This clause also specifies exceptions to the duty of confidentiality.

Clause 106 places a duty of confidentiality on a commissioning authority and a relevant person for a commissioning authority. ('Relevant person' is defined in the dictionary as a person authorised by the commissioning authority team to help the authority perform its functions). This clause also specifies exceptions to the duty of confidentiality.

Clause 107 links to the mandatory notification provisions under the Health Practitioner Regulation National Law. The effect of this clause is that the mandatory notification provisions of the National Law do not apply to 'excluded notifiable conduct' which comes to the notice of a registered health practitioner who is a member of an RCA team. 'Excluded notifiable conduct' is defined in the dictionary.

Clause 108 requires a commissioning authority to provide a copy of an RCA report to the Health Quality and Complaints Commission. However, this is not required if the commissioning authority is a private health facility and the commissioning authority has agreed that the chief health officer may give a copy of the report to the commission.

Clause 109 requires an RCA report to be given to the chief health officer where the reportable event happens at a private health facility.

Clause 110 requires the chief health officer to provide a copy of a report that relates to an event that occurs in a private health facility to the Health

Quality and Complaints Commission where the private health facility has agreed to these arrangements.

Clause 111 requires an RCA report to be given to the director of mental health, where the reportable event happened at an authorised mental health service.

Clause 112 applies if the commissioning authority is a network chief executive or the departmental chief executive. For these reports, the commissioning authority must give an RCA report to a prescribed patient safety entity, which is an entity prescribed under regulation whose responsibilities include the planning, implementation, management and evaluation of patient safety initiatives and programs. This clause also places a duty of confidentiality on a patient safety entity who receives a report.

Clause 113 applies if the coroner is investigating the death of a person and the death was a reportable event or the reportable event may otherwise be relevant to a coronial investigation. If requested by the coroner, or a police officer helping the coroner, the commissioning authority must advise whether an RCA of the reportable event is being or has been conducted and, if the RCA report has been completed, provide a copy of the report.

Clause 114 requires a commissioning authority to provide a copy of an RCA report to the Minister or departmental chief executive if requested to do so.

Clause 115 enables the commissioning authority to give a copy of an RCA report, or information contained in the report, to a person who the commissioning authority believes has sufficient personal or professional interest in the reportable event.

Subdivision 6 Protections

Clause 116 provides statutory protections for RCA team members or a relevant person for an RCA team. The clause provides that in any proceedings, the person must be indemnified by the entity that established the RCA team. (See *Consistency with Fundamental Legislative Principles* in these Explanatory Notes).

Clause 117 provides statutory protections for persons who honestly and on reasonable grounds give information to an RCA team or a relevant person

for an RCA team. In these circumstances, the person is not subject to any liability for giving the information and no action may be taken against the person for giving the information. (See *Consistency with Fundamental Legislative Principles* in these Explanatory Notes).

Clause 118 provides that a person cannot be required under an Act or legal process to divulge whether or not the person gave information to an RCA team, or divulge any document or information given to the RCA team.

Clause 119 provides statutory protection to documents and information in relation to RCA teams. Such a document or information cannot be accessed under any judicial or administrative order and is not admissible in any proceeding, other than a proceeding for an offence under this division. In addition, a person cannot be compelled to produce the document or information or give evidence relating to the document or information. (See *Consistency with Fundamental Legislative Principles* in these Explanatory Notes).

Clause 120 provides that a person must not cause, or attempt or conspire to cause, detriment to another person because anybody has provided assistance to an RCA team. A contravention of this clause is a reprisal or the taking of a reprisal.

Clause 121 provides that a person who takes a reprisal commits an offence which is punishable by a maximum penalty of 200 penalty units or 2 years imprisonment.

Clause 122 provides that a person who takes a reprisal is liable in damages to any person who suffers detriment as a result.

Subdivision 7 Miscellaneous

Clause 123 states that if a commissioning authority acts under this division and it transpires that the event is not in fact a reportable event, the provisions of the division apply as if the event were a reportable event. This clause also states that the provisions of this division prevail over any other Act or law if there is an inconsistency between them.

Division 3 Clinical reviews

Clause 124 states that the functions of clinical reviewers are to conduct a clinical review (as defined) and to provide expert clinical advice to the departmental chief executive, a network chief executive, an entity whose role includes maintaining and improving the safety and quality of health services, or a health service investigator. (Health service investigators are appointed under part 9 of the Bill).

Clause 125 provides that a clinical reviewer may be appointed by the departmental chief executive to undertake a clinical review in the department or a network, or by a network chief executive to undertake a clinical review in the network.

Clause 126 provides that a clinical reviewer is to hold office on specified conditions.

Clause 127 states when the office of a clinical reviewer ends.

Clause 128 provides that a clinical reviewer may resign.

Clause 129 provides for the powers of a clinical reviewer. Under this provision, a clinical reviewer may enter a public sector health facility at any time the facility is open for business or otherwise open for entry. (See *Consistency with Fundamental Legislative Principles* in these Explanatory Notes). A clinical reviewer may also require an employee of the department or a network health executive to give the reviewer a document, including a document that contains confidential information.

Clause 130 provides that a person must not state anything to a clinical reviewer, or give a document to a clinical reviewer, that is false or misleading.

Clause 131 provides that a person must not obstruct a clinical reviewer.

Clause 132 states the duty of confidentiality that applies to a clinical reviewer. Limited exceptions to this duty of confidentiality are also stated in this clause.

Clause 133 enables information obtained by a clinical reviewer to be provided to persons performing a function under the *Coroners Act 2003*, other than for the preparation of an annual report.

Clause 134 applies if, in conducting a clinical review, a clinical reviewer reasonably believes that a matter under review involves a blameworthy act

(as defined). In these circumstances, the reviewer must stop the review and give written notice to the person that appointed the reviewer that the review has been stopped and the reasons that the reviewer formed the reasonable belief. However, this clause does not apply if the clinical reviewer was appointed to assist a health service investigator.

Clause 135 applies to reports provided for reviews other than a review undertaken to provide clinical advice to a health service investigator. For these reviews, the clinical reviewer must prepare and provide a report to the person who appointed them to undertake the review. The report may include recommendations on ways in which the safety and quality of public sector health services can be maintained and improved. Where the departmental chief executive has appointed a clinical reviewer to undertake a review in a network, the chief executive may subsequently issue directions to the network as result of the review.

Clause 136 applies to a clinical review undertaken to provide clinical advice to a health service investigator. For these reviews, the clinical reviewer must prepare and provide a report to the investigator. The report may include recommendations on ways in which the safety and quality of public sector health services can be maintained and improved. (The Bill also provides that the health service investigator must have regard to the report provided by the clinical reviewer and attach the reviewer's report to the investigator's report – see clause 199).

Clause 137 requires a network chief executive to give the departmental chief executive a copy of a clinical review report if requested to do so by the departmental chief executive.

Clause 138 provides statutory protection to clinical review reports prepared for other than providing clinical advice to a health service investigator. These reports cannot be accessed under any judicial or administrative order and are not admissible in any proceeding, other than a proceeding for an offence under this division. In addition, a person cannot be compelled to produce the document or information or give evidence relating to the document or information. (See *Consistency with Fundamental Legislative Principles* in these Explanatory Notes).

Part 7 Confidentiality

The provisions of this division replace the Confidentiality provisions of the *Health Services Act 1991* (Part 7), modified to reflect the establishment of networks.

Division 1 Interpretation and application

Clause 139 states the definitions used in this part. This includes a definition of 'designated person', which includes health service employees and other health professionals engaged in delivering public sector health services.

Clause 140 provides a definition of parent for this Part.

Clause 141 states that this Part does not apply to ‘Act officials’, which are defined to include, for example, members of quality assurance committee, members of RCA teams, health service auditors, clinical reviewers and health service investigators. The reason that Act officials are excluded from this Part is that they each have their own separate confidentiality obligations under the Act.

Division 2 Confidentiality

Clause 142 states the duty of confidentiality under the Act, namely, that a designated person must not disclose any information acquired because of being a designated person if a person who is receiving or has received a public sector health service could be identified from the confidential information. Clauses 143 to 161 of the Bill provide the exceptions to this duty of confidentiality.

Clause 143 allows confidential information to be disclosed if the disclosure is required or permitted by an Act or another law. This clause also states specific circumstances under this Bill where this provision applies, namely, where information is provided to the departmental chief executive or other entities under a service agreement or a health service directive, or where the departmental chief executive provides information to the Commonwealth or an entity established by the Commonwealth Parliament.

Clause 144 allows confidential information to be disclosed with consent. The clause outlines different requirements for consent in relation to children.

Clause 145 allows confidential information to be disclosed for the care and treatment of a person.

Clause 146 allows confidential information to be disclosed to a person who has sufficient interest in the health and welfare of a person. This includes the disclosure of information in general terms, for example, a staff member at a hospital disclosing that a person's condition is 'satisfactory'. This exception does not apply if the person to whom the confidential information relates asks that the information not be disclosed.

Clause 147 allows confidential information to be disclosed if the disclosure is necessary to assist in lessening or preventing a serious risk to the life, health or safety of a person, or to public safety. This disclosure must be authorised by the relevant chief executive. For the purposes of this exception, and other relevant exceptions in this division, reference to a 'relevant chief executive' means the departmental chief executive, for information held in the department or a network, and a network chief executive, for information held in the network.

Clause 148 allows confidential information to be disclosed for the protection, safety or well-being of a child where the confidential information relates to another person.

Clause 149 allows confidential information to be disclosed to a designated person authorised in writing by the relevant chief executive to give effect to, or manage, a funding arrangement for a public sector health service, or for analysing, monitoring or evaluating public health.

Clause 150 allows confidential information to be disclosed to a designated person or an entity prescribed under regulation for the purpose of evaluating, managing, monitoring or planning health services.

Clause 151 applies to confidential information that may be disclosed under agreements with other State or Commonwealth government entities. For this provision to apply, the agreement must be prescribed under regulation and the relevant chief executive must authorise, in writing, that the release of the information is in the public interest. The clause places a duty of obligation on the Commonwealth or State entity that receives the information.

Clause 152 allows confidential information to be disclosed to or by an inspector. Inspectors are responsible, under Part 10 of the Bill, for monitoring and enforcing compliance with the Act.

Clause 153 allows confidential information to be disclosed to Act officials.

Clause 154 allows confidential information to be disclosed to a relevant chief executive for achieving the objects of the Act. This clause also allows the departmental chief executive or a network chief executive to disclose confidential information if it relates to the chief executive's functions under the Act.

Clause 155 allows confidential information to be disclosed to a health practitioner registration board or the National Agency (which provides support to the national health practitioner registration boards) if it relates to a complaint or notification about a registered health practitioner, or if it is in relation to an investigation or proceeding under a health practitioner registration Act.

Clause 156 allows confidential information to be disclosed to the Health Quality and Complaints Commission. This includes providing information in relation to a complaint about a provider of health services or an investigation under the *Health Quality and Complaints Commission Act 2006*.

Clause 157 allows confidential information to be disclosed to a person performing a function under the *Coroners Act 2003* other than for the preparation of an annual report.

Clause 158 allows confidential information to be disclosed by a relevant chief executive to a lawyer where the lawyer is representing the State or a network.

Clause 159 allows confidential information to be disclosed to the Australian Red Cross Society for the purpose of tracing blood or tissue infected with any disease, or the donor or recipient of that blood or tissue.

Clause 160 allows a relevant chief executive to authorise, in writing, the disclosure of confidential information in the public interest. This authority cannot be delegated by the relevant chief executive. A statement about a public interest disclosure under this clause must be included in the relevant annual report, namely -

- if the authorisation is made by the departmental chief executive - in the department's annual report, or

- if the authorisation is made by a network chief executive - in that network's annual report.

Clause 161 allows confidential information to be disclosed if it is necessary or incidental to any of the above-mentioned disclosures. This would include, for example, the disclosure of confidential information to support staff at a public sector hospital who make appointments for patients, maintain patient records and undertake other administrative tasks.

Part 8 Control of traffic and conduct on health services land

The provisions of this division replace equivalent provisions of the *Health Services Act 1991* (Part 5, Division 3)), modified to reflect the establishment of networks. Additional powers are also specified in division 5 of this Part.

Division 1 Interpretation

Clause 162 outlines the definitions used in this Part.

Division 2 Authorised persons and security officers

Clause 163 enables a network chief executive to appoint a person to be an authorised person under this Act for health services land (as defined) under the control of the network.

Clause 164 enables a network chief executive to appoint a person to be a security officer under this Act for health services land (as defined) under the control of the network.

Clause 165 provides that a person may be appointed both as an authorised person and a security officer.

Clause 166 provides that an authorised person and a security officer hold office on specified conditions.

Clause 167 states when the office of an authorised person or a security officer ends.

Clause 168 provides that an authorised person or a security officer may resign.

Clause 169 provides that authorised persons and security officers are to be provided with identity cards in the form specified in the clause.

Clause 170 requires an authorised person or security officer to produce his or her identity card when exercising a power under this Act.

Clause 171 provides that an identity card must be returned when a person ceases to be an authorised person or security officer.

Division 3 Traffic control

Clause 172 states that a reference in the division to an authorised person exercising a power or doing a thing is taken to mean a reference to the power being exercised for the health services land for which the authorised person is appointed.

Clause 173 states that a reference in the division to a network chief executive exercising a power or doing a thing is taken to mean a reference to the power being exercised for the health services land for which the network chief executive is responsible.

Clause 174 provides that an authorised person is responsible for controlling traffic on health services land and, for this purpose, may give directions to a person on the land. A person must comply with this direction unless they have a reasonable excuse.

Clause 175 provides that a network chief executive may erect regulatory notices regulating the driving, parking or standing of vehicles on health services land. A person on health services land must comply with a regulatory notice unless the person has a reasonable excuse.

Clause 176 applies if a regulatory notice (under the previous clause) does not state that a contravention of a notice is an offence against this Act and the penalty for the offence. The network chief executive must display another notice that states the above information.

Clause 177 provides that authorised persons may seize, remove and hold a vehicle that is parked in contravention of a regulatory notice or is abandoned. As soon as is practical, and no later than 14 days after the vehicle is seized, a network chief executive must give a written notice to the owner advising how the vehicle may be recovered. If the owner cannot be ascertained or located within this period, the notice may be given by publishing it in a newspaper.

Clause 178 provides that the vehicle may be sold by auction if the owner of the seized vehicle does not recover the vehicle within two months after a notice is given under the previous clause.

Clause 179 provides for the application of the proceeds of sale of the vehicle.

Division 4 Conduct on health services land

Clause 180 states that a reference in the division to a security officer exercising a power or doing a thing is taken to mean a reference to the power being exercised for the health services land for which the security officer is appointed.

Clause 181 states that a reference in the division to a network chief executive exercising a power or doing a thing is taken to mean a reference to the power being exercised for the health services land for which the network chief executive is responsible.

Clause 182 states that a person must not be disorderly or create a disturbance on health services land.

Clause 183 applies in circumstances where a security officer finds a person contravening the previous clause or reasonably believes that a person's presence may pose a threat to the safety of anyone else on the health services land. The security officer may direct the person to leave the health services land or a part of the health services land. A person must comply with this direction unless the person has a reasonable excuse.

Clause 184 provides that a person must not smoke on health services land other than in a nominated smoking place, i.e. a place nominated as a smoking place by a network chief executive (and designated as such by signage). If an authorised person or security officer finds a person smoking on health services land in contravention of this clause, the authorised

person or security officer may direct the person to stop smoking, leave the health services land or smoke only in a nominated smoking place. A person must comply with this direction unless the person has a reasonable excuse.

Division 5 Requirements to give name and address and other matters

Clause 185 applies if an authorised person or security officer finds a person committing an offence against this Part or reasonably believes that a person has just committed an offence against this Part. In these circumstances, the authorised person or security officer may require a person to state the person's name and residential address.

Clause 186 provides for an offence for failing to comply with a requirement to provide a name and address under the previous clause.

Clause 187 provides for an offence for obstructing an authorised person or security officer in the exercise of their powers under this Part.

Clause 188 provides an offence for impersonating an authorised person or security officer.

Part 9 Health service investigations

Clause 189 states the functions of health service investigators appointed under the Act, namely, to investigate and report on matters relating to the management, administration or delivery of public sector health services, including employment matters.

Clause 190 provides that a health service investigator may be appointed by the departmental chief executive to undertake an investigation in the department or a network, or by a network chief executive to undertake an investigation in the network

Clause 191 provides that a health service investigator is to hold office on specified conditions.

Clause 192 states when the office of a health service investigator ends.

Clause 193 provides that a health service investigator may resign.

Clause 194 provides for the powers of health service investigators. Under this provision, a health service investigator may enter a public sector health facility at any time the facility is open for business or otherwise open for entry. (See *Consistency with Fundamental Legislative Principles* in these Explanatory Notes). A health service investigator may also require an employee of the department or a network health executive to give the investigator a document, including a document that contains confidential information.

Clause 195 provides that a person must not state anything to a health service investigator, or give a document to a health service investigator, that is false or misleading.

Clause 196 provides that a person must not obstruct a health service investigator.

Clause 197 states the duty of confidentiality that applies to health service investigators. Limited exceptions to this duty of confidentiality are also stated in this clause.

Clause 198 enables information obtained by an investigator to be provided to persons performing a function under the *Coroners Act 2003*, other than for the preparation of an annual report.

Clause 199 requires a health service investigator to prepare and provide a report to the person who appointed them to undertake the investigation (i.e. the departmental chief executive or a network chief executive). If a clinical reviewer provided a report to the investigator, the investigator must have regard to the clinical reviewer's report and attach the reviewer's report to the investigator's report. The report may include recommendations about the ways in which the administration, management or delivery of public sector health services, including employment matters, can be improved.

Where the departmental chief executive has appointed an investigator to undertake an investigation in a network, the chief executive may subsequently issue directions to the network as result of the health service investigation.

Clause 200 requires a network chief executive to give the departmental chief executive a copy of a health service investigation report if requested to do so by the departmental chief executive.

Part 10 Monitoring and enforcement

Division 1 Interpretation

Clause 201 specifies the definitions used in this Part.

Division 2 General provisions about inspectors

Subdivision 1 Functions and appointment

Clause 202 states an inspector's functions under the Bill which are primarily to monitor and enforce compliance with the Act.

Clause 203 enables the departmental chief executive to appoint a public service officer of the department, a health service employee or a person prescribed under regulation to be an inspector under this Act.

Clause 204 provides that an inspector is to hold office on specified conditions.

Clause 205 states when the office of an inspector ends.

Clause 206 provides that an inspector may resign.

Subdivision 2 Identity cards

Clause 207 provides that inspectors are to be provided with identity cards in the form specified in the clause.

Clause 208 requires an inspector to produce his or her identity card when exercising a power under this Act.

Clause 209 provides that an identity card must be returned when a person ceases to be an inspector.

Subdivision 3 Miscellaneous provisions

Clause 210 states that if a provision of this Part refers to the exercise of a power and there is no reference to a specific power, then the reference is to the exercise of all or any of the inspector's powers that are relevant.

Clause 211 states that a reference in this Part to a document includes a reference to an electronic document.

Division 3 Entry of places by inspectors

Subdivision 1 Power to enter

Clause 212 states the powers that an inspector has to enter places. This includes the power to enter a public sector health service facility that is open for carrying on business or otherwise open for entry. (See *Consistency with Fundamental Legislative Principles* in these Explanatory Notes).

Subdivision 2 Entry by consent

Clauses 213 to 216 outline the procedures to be followed where an inspector intends to enter a place by consent.

Subdivision 3 Entry under warrant

Clauses 217 to 220 outline the procedures that apply for the application and issuing of a warrant, including electronic applications.

Clause 221 provides that a warrant is not invalidated by a defect in the warrant or compliance with this subdivision unless the defect affects the substance of the warrant in a material particular.

Clause 222 outlines the procedures that an inspector must comply with in entering a place under a warrant.

Division 4 General powers of inspectors after entering places

Clause 223 states that the powers under this division may be exercised if an inspector enters a place under this Part.

Clause 224 states the general powers that an inspector may exercise after entering a place including, for example, searching any part of the place or inspecting, examining or filming any part of the place or anything at the place.

Clause 225 states that an inspector may require a person at a place to give the inspector reasonable help to exercise a general power including, for example, the power to produce a document or to give information.

Clause 226 states that a person must comply with a requirement made of an inspector under the previous clause unless the person has a reasonable excuse, including that complying with the requirement might tend to incriminate the individual.

Division 5 Seizure and forfeiture

Subdivision 1 Power to seize

Clause 227 provides that an inspector who enters a place without consent or without a warrant may seize a thing at the place if the inspector reasonably believes the thing is evidence of an offence against this Act.

Clause 228 outlines the powers of seizure that an inspector has when entry is authorised with consent or under a warrant.

Clause 229 states that an inspector may seize the thing despite a lien or other security over the thing claimed by another person.

Subdivision 2 Powers to support seizure

Clauses 230 to 234 specify the powers an inspector may exercise to support the seizure of a thing. Offences apply for failing to comply with a

requirement made under this subdivision or for tampering with a seized thing.

Subdivision 3 Safeguards for seized things

Clauses 235 to 237 provide safeguards for things seized under the Act. These clauses deal with providing receipts and information notices in relation to a seized thing, providing access to the seized thing by the owner, and returning of the seized thing. The provision of an information notice under this division triggers a right of review and appeal under this Part.

Subdivision 4 Forfeiture

Clauses 238 to 241 provide for the forfeiture of things under the Act. Under these provisions, a thing may be forfeited to the State by decision of the departmental chief executive or by court order. Where the thing is seized by chief executive decision, the chief executive must give the owner an information notice about the decision, which triggers a right of review and appeal.

Subdivision 5 Dealing with property forfeited or transferred to the State

Clauses 242 and 243 specify how a thing seized or transferred to the State under the Act may be dealt with by the departmental chief executive.

Division 6 Disposal orders

Clause 244 enables the court to make an order to dispose of a thing where a person is convicted of an offence against this Act.

Division 7 Other information-obtaining powers

Clause 245 applies where an inspector finds a person committing an offence against this Act or where an inspector reasonably suspects a person has just committed an offence against this Act. In these circumstances, the inspector may require the person to state the person's name and residential address.

Clause 246 states that a person must comply with a requirement to state their name and residential address unless they have a reasonable excuse.

Clause 247 applies if an inspector reasonably believes an offence has just been committed against this Act and a person may be able to give information about the offence. The inspector may, by written notice, require the person to give the inspector information related to the offence at a stated reasonable time and place.

Clause 248 states that a person must comply with a requirement to provide information under the previous clause. It is, however, a reasonable excuse not to give the information if giving the information would tend to incriminate the individual.

Division 8 Miscellaneous provisions relating to inspectors

Subdivision 1 Damage

Clauses 249 and 250 deal with damage that may be caused by an inspector in exercising powers under this Part, including provisions related to giving notice of the damage to the person who appears to be the owner or in control of the damaged thing.

Subdivision 2 Compensation

Clause 251 provides that a person may claim compensation from the State if the person incurs loss because of the exercise of a power by an inspector

under this Part. However, this does not apply if the loss arose from a lawful seizure or forfeiture.

Subdivision 3 Other offences relating to inspectors

Clause 252 provides that a person must not state anything to an inspector, or give a document to an inspector, that is false or misleading.

Clause 253 establishes an offence for obstructing an inspector in the exercise of the inspector's powers under this Part.

Clause 254 establishes an offence for impersonating an inspector.

Division 9 Reviews and appeals

Clauses 255 to 264 provide for an internal review and appeal of a decision under this Part to seize or forfeit a thing. The provisions state that, in the first instance, the appeal is to be by way of an application for an internal review. The provisions state how a person may apply for a review and the decisions that the departmental chief executive may make. If the person who has applied for an internal review is dissatisfied with the review decision, the person may appeal to a court. The provisions enable a court to grant a stay of the operation of a review decision, and the decisions a court may make on appeal.

Part 11 Legal proceedings

Division 1 Application

Clause 265 states that this Part applies to a legal proceeding under this Act.

Division 2 Evidentiary aids

Clause 266 provides that the specified appointments and authorities are presumed unless a party to the proceeding requires proof of it.

Clause 267 states that the specified signatures are evidence of the signatures that they purport to be.

Clause 268 states that a certificate stating any of the specified matters is evidence of the matter.

Division 3 Offence proceedings

Clause 269 provides that a proceeding for an offence against this Act, other than a reprisal offence, is to be taken in a summary way.

Clause 270 sets the limitation on the time for starting proceedings for summary offences.

Clauses 271 and 272 set out the requirements for taking a proceeding for an indictable offence.

Clauses 273 provides that it is sufficient for a charge involving false or misleading information or a document to state that the information or document was 'false or misleading'.

Part 12 Miscellaneous

Clause 274 relates to the disclosure of personal information of health service employees and other health professionals engaged in delivering public sector health services. This information may need to be provided to another network or the department to enable checks to be made to assess the person's suitability for employment or engagement. This clause has the effect of being a disclosure permitted under an Act for the purposes of the *Information Privacy Act 2009***.**

Clause 275 gives the Governor in Council a reserve power to dismiss a Governing Council. The dismissal of a Governing Council is to be made on

the recommendation of the Minister only if the Minister is satisfied it is in the public interest to do so. This provision may be activated, for example, due to persistent under-performance by a network.

Clause 276 provides that the Governor in Council may appoint, on the recommendation of the Minister, the departmental chief executive or another qualified person to administer a network. This clause could be activated if the members of the Governing Council are dismissed under the previous clause, if at any other time there are no members of a network's Governing Council, or if at the commencement, a network's Governing Council has not been appointed.

Clause 277 provides for the term and role of an administrator appointed for a network.

Clause 278 provides that the Minister may establish advisory committees.

Clause 279 provides that the Minister may delegate the Minister's functions and powers under this Act to the chief executive. However, the Minister must not delegate the power to decide the terms of a service agreement or to give a direction to a network.

Clause 280 provides protections for the specified officials for things done under the Act honestly and without negligence. Under this provision, liability attaches instead to the specified entities. (See *Consistency with Fundamental Legislative Principles* in these Explanatory Notes).

Clause 281 provides that the departmental chief executive may approve forms for use under the Act.

Clause 282 provides that the Governor in Council may make regulations under the Act. In particular, regulations may be made to facilitate any future changes to functions between networks or between network and the department including, for example, changes to network boundaries. A regulation may also be made to facilitate the movement of health executives between networks and between networks and the department.

Part 13 Repeal, savings and transitional provisions

Division 1 Repeal

Clause 283 repeals the *Health Services Act 1991*.

Division 2 Savings and transitional

Clause 284 states the definitions used in this division.

Clause 285 provides that persons employed under the *Health Services Act 1991* continue to be employed under this Act on the same terms, conditions and entitlements. This clause does not apply to health executives employed in health service districts.

Clause 286 provides that health executives employed in health service districts are to transition to being network health executives on the same terms, conditions and entitlements. These provisions do not apply to district managers (currently called district chief executive officers).

Clause 287 provides for the continued appointment of the chief health officer.

Clause 288 provides for the continued appointment of inspectors who were appointed under the *Health Services Act 1991*.

Clause 289 provides for the continued appointment of authorised persons who were appointed under the *Health Services Act 1991*. A regulation will transition authorised persons from having responsibilities for a specified health service district to a corresponding network.

Clause 290 provides for the continued appointment of security officers who were appointed under the *Health Services Act 1991*. A regulation will transition security officers from having responsibilities for a specified health service district to a corresponding network.

Clause 291 provides for the continued appointment of auditors who were appointed under the *Health Services Act 1991*. Persons appointed as auditors under the *Health Services Act 1991* will continue as health service

auditors under the Act and, for that purpose, may exercise their powers in a network or the department.

Clause 292 provides for the continued appointment of investigators who were appointed under the *Health Services Act 1991*. Persons appointed as investigators under the *Health Services Act 1991* will continue as health service investigators under the Act and, for that purpose, may exercise their powers in a network or the department.

Clause 293 provides for the continuation of RCA teams that were appointed under the *Health Services Act 1991*. These RCA teams are to continue to perform their functions as if this Act had not commenced. To facilitate the transition to the new arrangements, the departmental chief executive may provide a copy of an RCA report produced under these transitional arrangements to the relevant network chief executive.

Clause 294 provides for the continuation of quality assurance committees that were established under the *Health Services Act 1991*. To facilitate the transition to the new arrangements, a regulation will state who is taken to have established each quality assurance committee for the purpose of this Act.

Clause 295 provides for the continuation of Ministerial Advisory Committees established under the *Health Services Act 1991*.

Clause 296 provides for the continuation of audits that had commenced under the *Health Services Act 1991*. This clause provides that these audits can continue as a health service audit under this Act, including in a network.

Clause 297 provides for the continuation of investigations that had commenced under the *Health Services Act 1991*. This clause provides that these investigations can continue as a health service investigation under this Act, including in a network.

Clause 298 provides that regulatory notices or information notices erected or displayed under the *Health Services Act 1991* are taken to have been erected or displayed under the relevant provisions of the Act.

Clause 299 relates to the authorisations and considerations made by the chief executive under the *Health Services Act 1991*. These matters relate to the confidentiality provisions under the repealed Act. As these provisions have been replicated in this Bill, this clause preserves these authorisations and considerations.

Clause 300 applies to applications under the *Information Privacy Act 2009* that relate to documents that will come under the control or possession of a network. For these applications, the department is to continue to deal with the application as if this Act had not commenced.

Clause 301 applies to applications under the *Information Privacy Act 2009* for a reviewable decision that relate to documents that will come under the control or possession of a network. For these applications, the Information Commissioner is to continue to deal with the application as if this Act had not commenced.

Clause 302 applies to persons who could have applied for a review of a decision under the *Information Privacy Act 2009* that relates to documents that will come under the control or possession of a network. For these applications, the person may apply for a review of the decision as if this Act had not commenced.

Clause 303 applies to applications under the *Right to Information Act 2009* that relate to documents that will come under the control or possession of a network. For these applications, the department is to continue to deal with the application as if this Act had not commenced.

Clause 304 applies to applications under the *Right to Information Act 2009* for a reviewable decision that relate to documents that will come under the control or possession of a network. For these applications, the Information Commissioner is to continue to deal with the application as if this Act had not commenced.

Clause 305 applies to persons who could have applied for a review of a decision under the *Right to Information Act 2009* that relates to documents that will come under the control or possession of a network. For these applications, the person may apply for a review of the decision as if this Act had not commenced.

Clause 306 requires a network to assist with the applications mentioned in the previous clauses, including by providing documents relevant to the applications under the *Information Privacy Act 2009* and the *Right to Information Act 2009*.

Clause 307 empowers the Minister to issue a transfer notice by gazette notice to facilitate the transfer of a function from the departmental chief executive or the State to a network. This clause lists the matters that may be included in a transfer notice, including:

- the transfer of assets and liabilities

- the transfer and granting of leases, licences or other rights
- making provision for a legal or other proceeding that is being, or may be taken by or against the State, and
- making provision for the issue, transfer or application of a contract, agreement or other instrument to the State or a network.

This clause provides that a transfer notice has effect despite any other law or instrument including, for example, a contract or agreement. The clause also provides that no government duties, fees or charges are payable for anything done under a transfer notice.

The clause states that a transfer notice may not be made under this clause after 30 June 2013, 12 months after the intended commencement of networks.

This clause, and the subsequent clauses related to transfer notices, raise fundamental legislative principle issues. (See *Consistency with Fundamental Legislative Principles* in these Explanatory Notes).

Clause 308 provides that a decision relating to a transfer notice is final and conclusive, and cannot be challenged, appealed or called in question in any way under the *Judicial Review Act 1991*, or by a court or other entity.

Clause 309 applies if a provision of a transfer notice is held by a court to be beyond power, invalid or an enforceable. This clause states that this does not affect the remaining provisions of the transfer notice.

Clause 310 provides for the way in which the registrar of titles or other persons are to register or record the relevant dealings under a transfer notice.

Clause 311 provides protections for the State or an employee or agent of the State including, for example, that these entities are not liable for civil action including for breach of contract.

Clause 312 states that a thing is taken to be done under this Part even if it involves taking steps under another Act. This clarifies that the protections afforded in the previous clause apply in these circumstances.

Clause 313 provides that a network has a period of six months after the commencement of this clause to develop and publish the first clinician engagement strategy and consumer and community engagement strategy.

Clause 314 provides that a network has a period of six months after the commencement of this clause to agree on the first protocol with primary healthcare organisations.

Clause 315 provides that the Minister may advertise for suitably qualified persons to be members of Governing Councils prior to the commencement of the Act.

Clause 316 provides that the public hospital reporting required under the *Health Services Act 1991* is to continue, notwithstanding the repeal of that Act. These arrangements will continue until such time as a regulation is prescribed under this clause. The purpose of this provision is to transition from State-based hospital reporting to the new national hospital reporting arrangements.

Clause 317 establishes a transitional regulation-making power to facilitate the establishment of networks. This provision expires on 30 June 2013, 12 months after the intended commencement of networks. (See *Consistency with Fundamental Legislative Principles* in these Explanatory Notes).

Part 14 Amendment of Tobacco and Other Smoking Products Act 1998

Clause 318 provides that this Part amends the *Tobacco and Other Smoking Products Act 1998* (Tobacco Act).

Clause 319 inserts a new Part 2, Division 1A into the Tobacco Act to provide for a single point of sale at a retail outlet. Requiring that smoking products be sold from only one location at a retail outlet reduces regulatory burden on retailers by limiting the locations where mandatory signage is required to be displayed. It is also consistent with the policy intent of restricting the promotion of smoking products in a retail setting. A penalty of 140 penalty units will apply to a supplier who sells smoking products from more than one point of sale at any one time. This is consistent with other existing offences in relation to the advertising, display and promotion of smoking products.

Clause 320 is the first of a series of amendments to the current signage provisions in the Tobacco Act, relating to the display of a prohibition sign

(in relation to supplying products to children) and quit smoking sign (to encourage a person to stop smoking) by a supplier at a retail outlet. The amendments will relocate the signage provisions, with minor amendments, from Part 2 of the Tobacco Act to Part 2A of the Act. This is to reflect the more appropriate placement of the signage provisions in the section of the Tobacco Act that provides for advertising and display restrictions, as signage requirements are linked to the restrictions around the point of sale area and tobacco product vending machines. This clause omits the heading for Part 2, Division 4.

Clause 321 omits the current signage provision (s20), relating to the display of a prohibition sign and quit smoking sign by a supplier from Part 2, Division 4 of the Tobacco Act, and replaces the provision with a requirement for a supplier to display at the relevant point of sale, a sign prescribed under a regulation as a mandatory sign. The current penalty of 20 penalty units will continue to apply to this offence. Section 20 is relocated to Part 2A, Division 1 as section 26HC. This is to reflect the more appropriate placement of this signage provision in the section of the Act that provides for advertising and display restrictions at the point of sale. As the policy is to remove the display of smoking products, it will be necessary to prescribe the way in which suppliers may, if they choose to, advise that they sell smoking products, to preclude signage being used as a form of advertising or promotion. This also recognises that an effect of the display bans and current advertising restrictions will be that retailers are prevented from promoting the availability of smoking products at their outlet. Accordingly under new section 26HC, a supplier may display at the relevant point of sale, a sign prescribed under the regulation as a permitted sign.

Clause 322 replaces the references to ‘prohibition sign’ and ‘quit smoking sign’ with ‘a sign prescribed under a regulation as a mandatory sign’ in section 21, which relates to the sign a person in charge of a tobacco product vending machine must display on or near the machine. This is consistent with the amendment to section 20 and will ensure consistency with signage across both the retail setting and tobacco product vending machines. The current penalty of 20 penalty units will continue to apply to this offence. Section 21 is relocated to Part 2A, Division 2 as section 26IF. This is to reflect the more appropriate placement of this signage provision in the section of the Act that provides for advertising and display restrictions in relation to tobacco product vending machines, as signage requirements are linked to the restrictions around those machines.

Clause 323 amends section 25 of the Act by removing a redundant definition for 'humidified container', amending the current definition for smoking product and inserting a definition for a new term, *relevant point of sale*.

The definition for humidified container is no longer required because this term was used in the current provisions relating to the permitted display of cigars. As display of all smoking products, including cigars, is being prohibited under the Bill, it is no longer necessary to use or define this term and it is therefore being omitted from the Tobacco Act.

The definition of 'smoking product', for the purpose of Part 2A, is broadened to include packages and cartons of tobacco products, herbal cigarettes, loose smoking blends and smoking related products. This amendment supports the policy intent of banning the display of all smoking products by ensuring that all forms of those products are captured (e.g. immediate packages, individual products and cartons etc).

A definition for 'relevant point of sale' is inserted to refer to the point of sale at a retail outlet at which the supplier sells smoking products, and relates to the introduction of the restriction on the number of points of sale at which a supplier may sell smoking products introduced in new section 13B.

Clause 324 omits current sections 26A to 26H (inclusive) of the Act, and replaces these provisions with new sections 26A to 26E. Current section 26A is omitted and redrafted to more appropriately state the offences that apply to the prohibition on display, and restrictions on advertising, of smoking products. Current sections 26B to 26H are omitted because these provisions, relating to requirements for display of smoking products, are redundant under this Bill. Consistent with drafting practices, these provisions have been removed and replaced with sections to effectively achieve the policy of banning retail displays of smoking products.

- Section 26A – Prohibition on display, and restrictions on advertising, of smoking products

Section 26A reflects the removal of a supplier's ability to display smoking products. The two offence provisions currently prescribed in s26A, in relation to display and advertising, are amended to form three offences. The splitting of the current offences reflects the need to ban any display of smoking products (s26A(1)), but to retain the ability for some advertising of products to remain providing this occurs at a retail outlet (s26A(2)) and in the way permitted under the Act (s26A(3)). Retaining the elements of

the current offences under two provisions may have been misleading, as it may have suggested that display 'in some form' could have been allowed under the Act, when this is not the case. This clause also clarifies that if a smoking product is kept by a supplier in compliance with the Division, the supplier does not contravene the section merely because the smoking product is seen by another person (s26A(4)). It is acknowledged that in some circumstances it is reasonable for smoking products to be seen. Providing the supplier has complied with the requirements of the Division, the fact that a product is seen will not constitute an offence under subsection (1).

- Section 26B – Location of smoking products at retail outlet

New section 26B provides clarity for the location of smoking products at a retail outlet. Currently, the display of smoking products is permitted only at the point of sale and the location of smoking products not on display is not prescribed. The display of smoking products will be prohibited under this Bill. It is necessary, therefore, to prescribe the location for all smoking products at the retail outlet in a way that distinguishes the products kept at or near the point of sale, or those that have special storage requirements (such as cigars which may require a temperature-controlled environment) from those that are located in other areas of the retail outlet (such as a locked storage room used to store products not for immediate sale).

The amendments provide that smoking products may be kept at or near the supplier's relevant point of sale, either on the seller's side of the point of sale, or above or below, but not on, a counter where customers are served, in a way that the smoking products cannot be accessed by customers. This is consistent with current restrictions at the point of sale. Under new section 26B, smoking products may also be kept in a room or other place, such as a locked storage room, if they are kept in a way that they cannot be accessed by customers. For cigars, these may be kept in a humidified room where the cigars can be accessed by customers only if, while a customer is in the room, the customer is accompanied by the supplier or an employee of the supplier. This is consistent with current requirements under the Tobacco Act.

Specifying all locations where smoking products may be kept in this way supports the operation of new section 26C that provides for fleeting incidental viewing of smoking products only to the extent required to carry out activities in the ordinary course of the supplier's business.

- Section 26C – Smoking products must be kept out of sight of customers

New section 26C states that smoking products kept at a retail outlet must be kept in a way that they are not visible to customers. This new section gives effect to the policy of banning the display of smoking products at retail outlets.

The covering of smoking products at or near the point of sale is prescribed under new section 26C so that these will be opaque and of a colour or design that does not make a feature of the covering as distinct from its surrounds. This is consistent with the policy intent and will ensure that the location of smoking products at the point of sale is not highlighted, promoted or advertised in any way.

To allow for normal business practices, such as removing a product as part of a transaction or necessary restocking of products, fleeting incidental viewing of smoking products of no more than $1m^2$ is permitted under this section only to the extent required to carry out activities in the ordinary course of the supplier's business.

- Section 26D – Smoking products must not constitute advertisement

Currently, smoking products in the allowed display area of one square metre or three square metres may not be arranged in a way that constitutes a tobacco advertisement or create a composite picture or other meaningful visual image whose component parts are printed on individual packages. New section 26D is consistent with the current arrangement, and ensures that products able to be viewed fleetingly and incidentally are not arranged in a way that is appealing or attention-grabbing to the customer. This will apply both at the point of sale and in other areas of the retail outlet, such as in a storage room.

Currently, the display of cartons is banned under the Tobacco Act and these are not included in restrictions for smoking products in the allowed display area as described above. Fleeting incidental viewing of smoking products under this Bill could include cartons. Cartons have therefore been explicitly included in new section 26D where component parts are mentioned in order to ensure that these, as well as immediate packages of smoking products, are captured.

- Section 26E – Display of retail prices of smoking products

New section 26E provides for the display of retail prices of smoking products available, or usually available, for sale at the retail outlet, in the form prescribed under a regulation.

The new section is consistent with the current provisions for display of price tickets of smoking products, with the additional requirement that tickets, or other indicators of price be fixed at the place where smoking products are kept. This clarity is provided to preclude the use of booklets of price tickets, or other selection aids, which would be inconsistent with the policy intent to limit the promotion of smoking products. If a retailer chooses to use price tickets, requiring that these be located at the place where smoking products are kept has the added benefit of assisting retail staff in locating specific products for transactions or restocking.

In addition, the current ability to use a single price board for product lines is omitted. This is because the price board was for the display of prices of cartons, which are prohibited from being displayed under current laws. As cartons are being treated in the same way as other smoking products, there is no need to distinguish the ways in which prices for cartons may be displayed, and for consistency, only price tickets or other indicators of price, as prescribed by regulation, will be permitted.

New section 26E also retains the prohibition that a display of the retail price of smoking products must not include anything else about the price of a smoking product including, for example, a thing that states the price is discounted. This is to retain the ability to prevent things, such as a "sale" or "discounted" sticker or ticket being used as a way to promote or advertise smoking products, which is prohibited. As price tickets or other indicators of price have the potential to be used to advertise smoking products, a breach of this provision will constitute a breach of the advertising offence under section 26A(3).

Clause 325 omits and replaces section 26IA of the Tobacco Act, which currently prescribes an offence for a person in charge of a tobacco product vending machine to advertise or display a tobacco product in or on the machine other than as permitted under the Act. The new section 26IA more appropriately reflects the ban on displaying smoking products in or on a tobacco product vending machine. The current offence provision in relation to display or advertising is amended to form two limbs to the offence. The splitting of the current offence reflects the need to ban any display of smoking products, but to retain the ability for some advertising of products to remain providing this occurs in the way permitted under the Act. Retaining the two parts of the offence under one limb may have been

misleading, as it may have suggested that display of smoking products in or on a tobacco product vending machine in some form could have been allowed under the Act, when this is not the case.

Clause 326 omits sections 26IB and 26IC of the Tobacco Act. Omitting section 26IB removes the current provision that prescribes the maximum size of a display area in a tobacco product vending machine. As the Bill prohibits the display of all smoking products in or on a tobacco product vending machine, it is no longer necessary to prescribe a maximum display area. Omitting section 26IC removes the current provision that prescribes the manner in which tobacco products in a tobacco product vending machine may be displayed. As the Bill prohibits the display of all smoking products in or on a tobacco product vending machine, it is no longer necessary to prescribe a manner in which products may be displayed. However, the manner in which retail prices of tobacco products may be displayed will be retained in section 26ID.

Clause 327 amends section 26ID of the Tobacco Act to prescribe the manner in which retail prices of tobacco products may be displayed in or on a tobacco product vending machine. Section 26ID states that retail prices may only be displayed by a price ticket, or other indicator of price, as prescribed under a regulation. Section 26ID also retains the prohibition that a display of the prices of tobacco products must not include anything else about the price of a tobacco product including, for example, a thing that states the price is discounted. This is to retain the ability to prevent things, such as a "sale" or "discounted" sticker or ticket being used as a way to promote or advertise smoking products, which is prohibited. As price tickets or other indicators of price have the potential to be used to advertise smoking products, a breach of this provision will constitute a breach of the advertising offence under section 26IA(b).

Clause 328 amends section 26IE of the Tobacco Act to refer to 'smoking products' in tobacco product vending machines, rather than 'tobacco products', which is a subset of the definition of smoking products. This reflects the expansion of the display ban to all smoking products and ensures consistency of the use of terms under the offence in section 26IA.

Clause 329 amends definitions for the Tobacco Act, by removing redundant definitions for 'humidified container', 'prohibition sign' and 'quit smoking sign', replacing the definition for 'carton', amending the definition for 'package' and inserting a definition for 'relevant point of sale'.

The definition for 'humidified container' is no longer required because this term was used in relation to current provisions that permit the display of cigars. As display of smoking products, including cigars, is being prohibited under the Bill, it is no longer necessary to use or define this term and it is therefore being omitted from the Act.

The definitions for 'prohibition sign' and 'quit smoking sign' are no longer required, as these terms have been replaced with a broader reference to 'a sign prescribed as a mandatory sign' in new sections 26HC and 26IF, the details of which will be prescribed under regulation.

The definition of 'carton' is amended to capture all cigar products. Currently, cartons are banned from display, but cigars are not. Under the Bill, it is the intent to ban the display of all smoking products and this will include boxes or cartons of cigars. Therefore, the definition of *carton* has been broadened to capture cigars.

The definition of 'package' is amended to capture cigar products, which are not captured under the current definition. Again, this will ensure that all smoking products, including cigars, are captured by display bans.

The definition of 'relevant point of sale' refers the reader to the newly inserted definition provided in the body of the Act, at section 25.

Part 15 Consequential amendments

Clause 330 states that Schedule 1 amends the Acts mentioned in the schedule.

Schedule 1 Consequential amendments

The purpose of the consequential amendments is predominantly to change references from the *Health Services Act 1991* (and the relevant sections in that Act) to the *Health and Hospitals Network Act 2011* (and the relevant sections in that Act). Consequential amendments are also made to Acts to refer to Local Health and Hospital Networks where functions are being transferred from the department to networks.

In addition, the following amendments are made in Schedule 1.

Child Protection Act 1999, amendment 6, requires the departmental chief executive to include in the annual report under that Act, details of the operations of networks that are relevant to child protection.

Criminal Law Amendment Act 1945, amendment 1, requires the report under section 18(8A) of that Act to be provided to the Director of Mental Health rather than the departmental chief executive.

The *Health Quality and Complaints Commission Act 2006* is amended to remove reference to health community councils.

The *Hospital Foundations Act 1982* is amended to provide that one member of a hospital foundation is to be nominated by the chairperson of the Governing Council for the hospital that is associated with the foundation or, if there is more than one associated hospital, the chairperson of the Governing Council prescribed under regulation. These amendments do not affect any existing members of hospital foundations

Under the *Information Privacy Act 2009*, the National Privacy Principles apply to the health department while the Information Privacy Principles apply to other government entities. To reflect the changes made by this Bill, the Information Privacy Act is amended so that the National Privacy Principles apply to networks as well as the health department.

M*ental Health Act 2000*, amendment 3, provides that the Director of Mental Health may require an administrator of an authorised mental health service to provide documents or information related to patients in an authorised mental health service. This power has been included given that authorised mental health services will now be located in networks which are separate entities to the department.

Mental Health Act 2000, amendment 5, provides that the Bill does not affect the declaration of any authorised mental health service under the Mental Health Act.

Public Health Act 2005, amendment 1, includes transitional arrangements for research approved under the Public Health Act prior to the commencement of the Bill. These provisions enable the approved research to continue through accessing the relevant information in networks.

Public Records Act 2002, amendment 1, provides that the health department will remain the responsible public authority (as defined in that Act) for public records given to the State archives prior to the commencement of the Bill.

Schedule 2 Conduct of business by Governing Councils

This Schedule outlines the way in which Governing Councils are to conduct their business.

Schedule 3 Dictionary

Schedule 3 defines the terms used in the Bill.